



W.P.No.16800 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.P.No. 16800 of 2017

T.Sakthivel

..Petitioner

Vs.

1.The Management of
Tamilnadu State Transport Corporation (Coimbatore) Ltd.,
Erode Region,
Rep. By its Managing Director,
Erode.

2.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai – 2.

...Respondents

PRAYER: This Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st respondent to remit the employer contribution of the PF deducted during the service of the petitioner as Driver from 19.01.1981 to 30.09.1992 to the 2nd



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respondent trust; direct the respondents to count his earlier service as Driver from 19.01.1981 to 30.09.1992 as pensionable service along with his service in the administrative department and to sanction him full pension under the Tamil Nadu State Transport Employees Pension Fund Rules, along with arrears and consequential benefits from 01.05.2012, after adjusting the reduced pension now being paid to him, together with 18% interest p.a.

For Petitioner : Mrs. V.Ponkodi
for Mr. V.Ajoykhose.

For Respondent 1 : Mr. M.Murali Vinoth

For Respondent 2 : Mr. C.S.K. Sathish
Standing Counsel.

ORDER

The petitioner seeks issuance of Writ of Mandamus to direct the 1st respondent to remit the employer contribution of PF deducted during his service as a Driver for the period 19.01.1981 to 30.09.1992 and to consequently direct the respondents to count his earlier service as Driver for the said period as pensionable service and to sanction him



full pension under the Tamil Nadu State Transport Employees Pension Fund Rules, together with arrears, consequential benefits and interest, after adjusting the reduced pension being paid to the petitioner.

2. The petitioner in his affidavit filed in support of the Writ Petition states that he joined the service of the 1st respondent Corporation as a Driver on 19.01.1981 and that he was made permanent with effect from 01.11.1981. The petitioner rendered his service as a Driver for a period of 12 years continuously. The petitioner possessed a degree qualification and since vacancy arose in the post of '*Junior Assistant*' in the 1st respondent Corporation itself, the petitioner applied for the said post and he was also selected in an interview that was held on 18.09.1992. The 1st respondent called upon the petitioner to resign from the post of Driver by its proceedings dated 28.09.1992. The petitioner therefore submitted his resignation letter and thereafter the 1st respondent issued an appointment order to the petitioner on 30.09.1992 for the post of Junior Assistant.



3. The petitioner states that there has been no break in his service as he was employed with the 1st respondent upto 30.09.1992 as a Driver and thereafter from 01.10.1992 as a Junior Assistant. The petitioner subsequently retired from his service on 30.04.2012, on reaching Superannuation. It is the grievance of the petitioner that the service rendered by him as a Driver from 19.01.1981 to 30.09.1992 was not treated as being part of his continuous service and he was not paid full pension. Though the petitioner made several representations, no action has been taken by the respondents and they continued to pay him a considerably reduced pension. In such circumstances, the petitioner has approached this Court seeking issuance of a Writ of Mandamus.

4. Though the respondents have not filed a counter, learned counsel for the 1st respondent Corporation would submit that the petitioner was fully aware of the conditions for employment and since he resigned from the earlier post of Driver, his services cannot be counted for the purpose of calculating PF. In fact, according to the



learned counsel for the 1st respondent all the benefits payable to the petitioner have been duly settled on his attending superannuation and therefore nothing remains to be paid. Therefore, he sought for the dismissal of the Writ Petition.

5. Per contra, the learned counsel for the petitioner would rely upon the Tamil Nadu State Transport Corporation Employees Pension Fund Rules. Rule 16 of the said rule is extracted herein below for easy reference:

“16.Monthly Member's Pension

(a)A member shall be entitled to-

(i)Superannuation Pension, if he has rendered a qualifying service of 10 years or more and retires on attaining the age of 58 years or the retirement age that may be fixed by the employer.

(ii)Voluntary Retirement Pension if he has rendered a qualifying service of 20 years or more and attained the age of 50 years.



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(b) In the case of exit of an employer the amount of monthly superannuation pension or retiring pension, as the case may be, shall be computed in accordance with the following formula namely:

*Monthly Member's Pension = Pensionable salary
(50% of last drawn basic pay*) X Pensionable service
**/30*

**Basic Pay includes Personal Pay*

***The Pensionable service shall be restricted to 30 years.*

(c) Except as otherwise expressly provided hereinafter the monthly members pension under subparagraph (b) mentioned above shall be payable from the date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment. The application for pension shall be submitted in the format prescribed by the Trust.



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(d)The member's pension is payable till the lifetime

(e)Forfeiture of service of Resignation:

Resignation from service or post entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department / State Public Sector Undertaking / Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/ EP Scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual.

6. From a reading of the said rule, especially the proviso, it is clear that resignation would not lead to forfeiture of past services if it is taken with proper permission and the new appointment is under the Government Department / State Public Sector Undertaking / Board.



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WEB COPY 7. Here the petitioner resigned from the job of Driver with due permission and joined the service of the 1st respondent Corporation only as Junior Assistant. There is absolutely no justification for the respondents to withhold the pension or not take into the account the services rendered by the petitioner as a Driver. In so far as the learned counsel for the respondent's contentions that the petitioner was put on notice that his past services will not be counted, the same cannot be against the letter and spirit of the statute and the rules framed therein and therefore on this ground the petitioner cannot be denied relief.

8. The petitioner is entitled for his past service as a Driver to be counted and accordingly his benefits being fixed. In such view of the matter, the respondents shall count the past service of the petitioner as a Driver with the 1st respondent Corporation between 19.01.1981 and 30.09.1992 as pensionable service and consequently sanction the petitioner with full pension and release the differential arrears that would become payable to the petitioner from 01.05.2012.



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WEB COPY 9. Though the petitioner has claimed 18% per annum towards interest on the arrears payable to him, this Court feels that 6% per annum would be just and proper. Therefore, the entire differential arrears payable to the petitioner shall be paid together with 6% interest per annum. This exercise shall be completed by the respondents within a period of 4 weeks from the date of receipt of a copy of this order.

10. In the result, the Writ Petition is allowed. No costs.

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Index : Yes / No
Internet : Yes / No
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